

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James Hawkins, #219352,

Plaintiff,

vs.

NFN McMillian;

NFN Powell, doctor;

NFN Smokes;

NFN Brown, Sgt.;

NFN Marsh, Major;

Gary Fannin;

Reaver Weeks;

Robin Gabel;

NFN Page;

NFN Bigger;

NFN Sanders, Sgt.; and

NFN Moore,

Defendants.

C/A No. 0:07-1319-JFA

O R D E R

Plaintiff, an inmate with the South Carolina Department of Corrections, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On July 30, 2007, this Court entered an Order that this action be dismissed without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure due to the *pro se* plaintiff's failure to comply with court Orders entered on May 17, 2007, and June 26, 2007, which required that the plaintiff bring this action into proper form. On August 2, 2007, this Court received and filed plaintiff's documents, which are the documents sought by the proper form orders. The Court notes that it appears the plaintiff placed his documents in the prison mail system on July 30, 2007. *See* Docket Entry 27, part 3 of the attachment. *See also Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at moment of delivery to prison authorities for forwarding to District Court). The Court further notes that the plaintiff has now substantially complied with the May 17, 2007, and June 26, 2007, Orders.

Pursuant to Rule 59(d) of the Federal Rules of the Civil Procedure, this Court on its own initiative, believes that in the interest of justice it is appropriate to vacate the July 30, 2007, Judgment and re-open this action for further proceedings. *See Stubbs v. Hunter*, 806 F. Supp. 81, 82-83 (D.S.C. 1992) (within ten days of entry of judgment, a Rule 59 motion may be brought); *Kelly v. Moore*, 376 F.3d 481, 484 (5th Cir. 2004) (“The district court, acting on its own motion, must rule within ten days after entry of judgment.”). It is in the interest of justice to re-open this action for further proceedings based upon the following reasons: the complaint had not yet been served on any defendant; it appears that the plaintiff’s formal education may have concluded with “grade school”; the plaintiff is incarcerated which may have hindered his ability to complete the required paperwork on a timely basis; it appears that the alleged events occurred in 2004 so the statute of limitations may be an issue; and this is the plaintiff’s second attempt to bring a civil rights action based upon many of the same facts – this Court dismissed the prior case (C/A No. 0:06-191-JFA-BM) without prejudice and without service of process for failure to bring the case into proper form.

Accordingly, pursuant to Federal Rule of Civil Procedure 59(d), IT IS ORDERED that the Clerk of Court vacate the July 30, 2007, Judgment and re-open this action for further proceedings. IT IS FURTHER ORDERED that this case be remanded to the assigned United States Magistrate Judge for determination of whether service of process should be authorized.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

August 9, 2007
Columbia, South Carolina